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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, and statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

Income of an unlicensed foreign corporation having no property in Oklahoma, derived wholly from interstate business, was held not taxable under the Oklahoma Income Tax Law in *Curlee Clothing Co. v. Oklahoma Tax Commission*, decided by the Supreme Court of Oklahoma, May 18, 1937.

The question of what constitutes doing business by a foreign corporation continues to be an outstanding subject of litigation. Ten opinions digested in this issue of The Corporation Journal touch upon the subject. In four of these, sales made in interstate commerce are held not to constitute the doing of business, and in another mere purchasing in a foreign state is not so regarded. In other cases, effecting the sale of real estate as a broker and the disposal of merchandise from house to house are found to come within the statutes requiring qualification. In two of the cases, unlicensed foreign corporations are denied the right to maintain suit in the state courts—due directly to statutory provisions barring their claims from the courts because they were not authorized to do business.

Raymond Kenneau

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for June

The Constitution

1787—1937

ONE HUNDRED AND FIFTY YEARS AGO, IN JUNE, 1787, the Federal Convention which framed the Constitution of the United States was meeting in Independence Hall, Philadelphia, deliberating upon the form that document was to assume.

An idea of the knowledge of forms of government possessed by the delegates, in the light of which they labored, may be obtained from certain remarks of Benjamin Franklin, delegate from Pennsylvania, at the June 28th session in 1787:

> *"We have gone back to ancient history for models of government, and have examined the different forms of those republics which, having been formed with seeds of their own dissolution, now no longer exist. And we have viewed modern states all round Europe, but find none of their constitutions suitable to our circumstances."*

Thus, discovering neither in the past nor their own day, a constitution adapted to the circumstances in which the colonies found themselves, the delegates, with Washington as their presiding officer, framed a new type of constitution, of which Bryce observed in his "American Commonwealth":

> *"The constitution of 1789 . . . after all deductions . . . , ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, simplicity, brevity, and precision of its language."*

The Constitution the delegates proposed was first applied to the government of three millions of people. Today their numbers have grown to one hundred and thirty millions. The Constitution, too, has grown. It may be said that today it is not limited in its length to the few thousand words which the delegates prepared, for, year after year interpretations of its provisions have been rendered, by means of decisions which might be regarded almost as integral parts of that instrument, since they reveal how its terms are to be applied. Many a decision determining the meaning of but one of its phrases has attained a length far greater than that of the Constitution.

History has been written about the Constitution and is still being written. Doubtless the constitutional history of the next one hundred and fifty years in America will prove as interesting and absorbing as that of the first century and a half of the Constitution now nearing a close.

Domestic Corporations

Delaware—Wisconsin.

Wisconsin Supreme Court construes Section 35 of Delaware General Corporation Law. In an action in a Wisconsin court, brought by the Federal trustee in bankruptcy of a Delaware corporation to enforce the personal liability of the defendants as directors of the corporation under Section 35, Delaware Corporation Law, for the payment of dividends out of capital assets, it had been held that the trustee did not have legal capacity to recover under that section, which made directors jointly and severally liable by reason of such payments from capital assets "to the corporation and to its creditors, or any of them, in the event of its dissolution or insolvency, to the full amount of the dividend so unlawfully paid, with interest on the same from the time such liability accrued." The Wisconsin Supreme Court, on appeal, also denied the right of the trustee to recover, saying that "it is only while the corporation is solvent and undissolved that the liability in question is to the corporation, and, in the event of its dissolution or insolvency, that liability is exclusively to the creditors of the corporation, or any of them." The court also concluded that the Delaware statute was so framed that the Federal statutes governing the appointment and activities of the trustee were insufficient to empower the trustee to recover. *John J. Morris, Jr., Trustee in Bankruptcy for Central Telephone Company v. Marshall E. Sampsel et al.*, 272 N. W. 53. Commerce Clearing House Court Decisions Reporting Service Requisition No. 173673. Gold & McCann of Milwaukee (Howard Duane of Wilmington, Del., of counsel), for appellant. William Ryan of Madison, for respondents.

Michigan.

Creditor of a corporation whose assets are taken over by another corporation under an agreement to assume the liabilities, may maintain an action at law against the company acquiring the debtor's assets. A Maryland corporation sold all of its assets to the defendant, a Michigan corporation, in consideration of the surrender and cancellation of all of the Maryland corporation's stock, owned by the defendant, except a small amount, and of defendant's agreement to pay and discharge all of the Maryland corporation's liabilities. Plaintiff, claiming to be a creditor of the Maryland corporation, sued defendant under the terms of the agreement between the two corporations, and obtained a judgment in the lower court. On appeal to the Supreme Court of Michigan, defendant disputed plaintiff's right to sue it. The court held, however, that as the defendant had admitted acquiring all the property of the Maryland company and because of its further assumption of all the liabilities of that company, plaintiff, if a creditor of the Maryland company, could maintain an action at law against the defendant. *Garey v. Kelvinator*

Corporation, 271 N. W. 723. Wiley, Streeter, Smith & Ford, of Detroit, for appellant. Edward N. Barnard of Detroit, for appellee.

Minnesota.

Court will not compel declaration of a dividend unless directors act "fraudulently, oppressively, unreasonably and unjustly." Plaintiffs were life beneficiaries under a trust which held defendant corporation's stock. They sought to compel the company to declare additional dividends, or failing in that, either to distribute stock held in its treasury or to issue a stock dividend. The Minnesota Supreme Court found that the Company had a long and successful history and that it was well managed. "There is no presumption," said the court, "that the directors acted in bad faith or unjustly. The finding of the lower court to the exact contrary seems to have adequate evidence to sustain it." The relief sought was therefore denied, on the ground that the declaration of a dividend rests in the sound discretion of the directors and a dividend is not to be compelled by the court unless the directors act fraudulently, oppressively, unreasonably or unjustly. *Anthony Schmitt, Jr., trustee, et al., v. Eagle Roller Mill Company et al.*, Minnesota Supreme Court, March 12, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 173708; 272 N. W. 277. Kingman, Cross, Morley, Cant & Taylor of Minneapolis, (Dempsey & Dempsey of Cincinnati, Ohio, of counsel), for appellants. Somsen, Dempsey, Johnson & Somsen of New Ulm, for respondents Eagle Roller Mill Co., Edgar C. Veeck and Gerhard Spaeth. Fowler, Carlson, Furber & Johnson and C. A. Taney, Jr., of Minneapolis, for respondent Katherine M. Silverson. Charles Taney Silverson and C. A. Taney, Sr., Flor & Reim, of New Ulm, for interveners.

Foreign Corporations

Delaware.

Corporation making sales in interstate commerce held not subject to occupational license tax. Plaintiff, a Minnesota corporation, sought to recover the balance due upon two contracts for the sale of certain scales. The defendant had abandoned a defense that plaintiff had not qualified as a foreign corporation, and relied upon plaintiff's non-compliance with the Delaware statute requiring the payment of a merchant's occupational license tax. Plaintiff had no regular place of business in Delaware and had no stock of goods in the state. The orders for the machines were taken while they were outside the state, after which they were shipped into the state to fill the orders. The Superior Court of Delaware, New Castle County, holds the shipment to have been made in the furtherance of interstate commerce, and that the plaintiff was not required to take out an occupational license in Delaware. *Wilmington Dry Goods Co. v. National Automatic Machine Co.*, 190 A. 735. Edmund

S. Hellings and Ivan Culbertson of Wilmington, for National Automatic Machine Co. Biggs, Biggs & Lynch of Wilmington, for Wilmington Dry Goods Co.*

*The full text of this opinion is printed in **The Corporation Tax Service**, Delaware volume, page 503.

Louisiana.

Right to use advertising matter may be subject of sale in interstate commerce; seller held relieved from necessity to register as a foreign corporation. Perhaps the majority of "doing business" cases, which involve the question of the necessity of qualification by a foreign corporation in a state in which it is not licensed, are concerned with activities of corporations dealing in "goods, wares and merchandise," rather than "service" activities which do not involve the actual sale of tangible personal property. A recent Louisiana case of the latter type is *Norm Advertising, Inc. v. Parker*, 172 So. 586, decided by the Court of Appeal of Louisiana, Second Circuit. There, defendant contracted with plaintiff unlicensed foreign corporation to purchase *the right to use* certain copyrighted advertising matter, for which plaintiff agreed to furnish mats for a period of one year. The contract was solicited by plaintiff's traveling agent and accepted at its New York office. The court says: "The transaction contemplated and provided for in the written contract was one of interstate commerce." "The fact that the contract in question grants merely the right to use the copyrighted product within a designated territory, instead of providing for a complete relinquishment of title to it by plaintiff, does not prevent the transaction from being interstate in character." Plaintiff was therefore permitted to maintain an action brought on the contract. Hawthorne & Files of Bastrop, for appellant. Edward L. Gladney, Jr., of Bastrop, for appellee.

Mississippi.

Corporation acting as real estate broker in effecting sales held "doing business." Plaintiff, a Tennessee corporation, not licensed in Mississippi, sought to recover a brokerage commission from defendant bank, which had employed plaintiff to find a purchaser for certain real estate of defendant's in Mississippi. Section 4140, Mississippi Code of 1930, provides in part that any foreign corporation doing business in Mississippi failing to domesticate or become authorized to do business in the state "shall not be permitted to bring or maintain any action or suit in any of the courts of this state." Plaintiff's failure to be licensed was set up as a defense under this section, and it was established that during the years 1932 to 1935, inclusive, plaintiff had, through one of its agents, effected sales of thirty-three tracts of land in Mississippi. The Mississippi Supreme Court regarded this as doing business in the state and held that the chancellor had properly dismissed the bill in the lower court. *Marx & Bensdorf,*

*Inc. v. First Joint Stock Land Bank of New Orleans, Louisiana,** 173 So. 297. Commerce Clearing House Court Decisions Reporting Service Requisition No. 175026. Julian C. Wilson and Bertrand W. Cohn of Memphis, Tenn., for appellant. Brewer & Montgomery of Clarksdale, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service, Mississippi Volume, page 510.**

New Mexico.

Making sales in interstate commerce of lighting system plants, installed by purchaser, is not "doing business." The agents of appellant company took orders in New Mexico for lighting system plants. The orders were sent to the Ohio office of the company, where, after approval, shipments of the plants were made direct to the New Mexico customers, who installed the lighting system. That these were transactions in interstate commerce, is the holding of the Supreme Court of New Mexico. It reversed a judgment that such activities amounted to "transacting business in the state," so as to require qualification. *Abner Mfg. Co. of Wapakoneta, Ohio, v. McLaughlin*, 64 P. (2d) 387. O. P. Eastwood of Clayton, for appellant. O. T. Toombs of Clayton, for appellee.

New York.

Unlicensed foreign corporation doing business in state denied right to establish claim in court proceeding. The New York Supreme Court, Appellate Division, First Department, confirms the action of the Surrogate's Court of the County of New York in *Scheftel's Estate*, 281 N. Y. S. 957, (The Corporation Journal, December, 1935, page 58), in holding that a foreign corporation, doing business in New York but not licensed under Section 181 of the Tax Law, is without authority to establish a claim in an accounting proceeding in the Surrogate's Court. The fact that the appellant corporation paid the required license fee after its claim had originally been disallowed was held immaterial, as the corporation had no right to initiate or bring an action in the courts in the first instance. The court ruled that this proceeding by the foreign corporation to obtain affirmative relief in the Surrogate's Court was an "action" within the purview of section 181 of the Tax Law. That section concludes with the following mandatory provision: "No action shall be maintained or recovery had in any of the courts in this state by such foreign corporation after thirteen months from the time of beginning such business within the state, without obtaining a receipt for the payment of the license fee upon the capital stock employed by it within this state during the first year of carrying on its business in this state." *Estate of Edwin King Scheftel*, New York Supreme Court, Appellate Division, First Department, March 25, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 174600; 294 N. Y. S. 387. Carroll G. Walter of counsel,

(James Lee Kauffman and William B. Denton with him on the brief; Patterson, Eagle, Greenough & Day, attorneys) for appellant. Blaine F. Sturgis of counsel (Andrew A. Frazer, attorney) for respondents. Lewis E. Sisson, special guardian, for Florence Sophia Frazer Scheftel, infant.*

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 215.

Purchasing by a foreign corporation held not to be "doing business" so as to subject its employees to service of summons. Service of summons was made upon an employee of defendant foreign corporation under facts outlined by the Supreme Court, Appellate Term, First Department, as follows: "Defendant is a corporation of the state of Texas and its home is in the city of Dallas in that state. It is engaged in the sale of textiles in the southwestern part of the United States. It manufactures some goods but purchases the greater part of them. Most of its purchases are made in the state of New York. In the ordinary course of its business it sells no goods in this state, though it has done so on one or two isolated occasions. It maintains a small office here in which it employs three men and a stenographer. Its purchases are often made by buyers who come here from Dallas, but a large part of its buying is done in Texas. The corporation keeps no bank account here in its own name, though a small account is maintained in the name of one of its New York employees, from which small disbursements are made. The goods purchased here are paid for by checks sent from Dallas and the New York employees, except the stenographer, are similarly paid. The duties of the New York employees are, in the main, purely clerical though they do give some assistance to the buyers when the latter come to New York. One of the employees was served with the summons in this action. Upon these facts we are of the opinion that the corporation cannot properly be said to have so brought itself within the state as to subject itself to the jurisdiction of our courts." *Fickett v. Higginbotham-Bailey-Logan Co.*,* 293 N. Y. S. 566. Parker & Aaron (Charles Adkins Baker, of counsel), of New York City, for appellant. Max Gelles of New York City, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York volume, page 220.

South Dakota.

Will the sale of his samples, by a salesman selling by sample in interstate commerce, give the interstate business an intrastate character? The Supreme Court of South Dakota referred to the rule that "goods sold upon orders obtained by traveling salesmen, which are shipped by the seller from without the state, are goods sold in interstate commerce," and continued: "With the above ruling in mind, the only basis that can be found for the trial court's finding that the sales in question were intrastate rather than interstate

commerce is that a portion of said sales were sales of samples made direct by the traveling salesmen of appellant to the respondents. We cannot agree that the sales of these samples were sales made in intrastate commerce. These samples were brought into this state by the traveling salesmen of appellant, not for the purpose of sale, but to be used in securing orders for goods sold in interstate commerce. The nature and character of a sample carried by a salesman traveling for a company located without the state, and which is used by the salesman to procure orders transmitted to and filled by the company without the state, is that of an implement of interstate commerce. The fact that some of these samples were sold direct to the respondents does not make said sale a sale in intrastate commerce and one which will label all the transactions between appellant and respondents as intrastate. Such a sale of an implement of interstate commerce is merely incidental to the main business transactions between the appellant and respondents which are concededly interstate in character. We must therefore hold that the trial court erred in finding that the appellant had engaged in intrastate business within this state when it made sales of merchandise to the respondents."

A mortgage had been given to cover past-due indebtedness arising out of the sale of merchandise sold in the manner outlined above, and in this action a foreclosure was sought by the foreign corporation making the sales. The court held that, as the debt had been created in the course of interstate commerce, "it is permissible for appellant to come into the state to collect it in cash or by accepting a note and mortgage, and that the note and mortgage thus taken are valid and subject to enforcement." *Wyman, Partridge Holding Co. v. Lowe et al.*,* 272 N. W. 181. Williams & Sweet of Rapid City, for appellant. Hayes & Hayes and John T. Heffron of Deadwood, for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service**, South Dakota volume, page 136.

Texas.

Sale of merchandise from house to house held "doing business." In *Baldwin Music Shop, Inc. v. Watson*, 102 S. W. (2d) 478, the Court of Civil Appeals of Texas, Beaumont, referred to a former appeal in the same case reported at 88 S. W. (2d) 516, (The Corporation Journal, March, 1936, page 134), in which it had ruled that the mere acceptance of a note in Texas by a foreign corporation, does not show that the corporation is doing business there within the meaning of article 1529, R. S. 1925, requiring qualification by foreign corporations. Upon this second appeal, however, it was held that, under the evidence, appellant corporation was to be regarded as doing business so as to justify a dismissal of the suit brought by it. It was shown that appellant sent its pianos into Texas on trucks, where they were sold by house to house canvass, or "peddled" from house to house. "The notes in issue were given to Broyles Music Company, Inc., in payment of a piano sold in the manner stated

Judgment by Default

SUCH was the sad news dropped by an Indiana court without warning on a Michigan corporation qualified as foreign in Indiana.

No notice of the suit, the corporation's officers testified when the case was unsuccessfully appealed, hence no chance to defend against plaintiff's claims. From the Indiana courts to the Michigan courts the case went, and up to Michigan's Supreme Court—but the judgment stood.

"How could it be?" ask corporation officials. But corporation lawyers understand—and deplore.

In qualifying as foreign in Indiana, this company, like many another, caused one of its own employes to be designated as its corporate representative. Then, like many another, it shifted its employes. The one registered as corporate representative in Indiana left that state altogether but the company neglected to file a change of agent on the state's records.

Came trouble with a local trucking firm, disputed claim, suit for damages; attempt to serve summons on registered corporate representative who of course could not be found; Secretary of State therefore by law the corporation's substitute agent and summons served upon him; summons forwarded, the Secretary of State's assistants said, to the corporation—never received by the company, the company's officers testified.

Result: No appearance of the company at the trial, default judgment entered, appealed by company, judgment

Damages—$4,885.66!

upheld. (Rarden et al. v. R. D. Baker Co., 217 N. W. 712). "Any service so had on the Secretary of State," says the law as cited by the court, ". . . shall be of the same legal force and validity as if served on the corporation itself."

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$4,885.66 plus costs.

So it has been with many another corporation in many another state. Yet the preventive is simple. Experienced corporation lawyers have found it in corporate representation by The Corporation Trust Company and its affiliate, C T Corporation System, an organization which makes corporate representation its *business* and functions in each state not for one corporation alone but for many, and therefore maintains *continuous* presence at the registered address.

But not only that: The experienced corporation attorney also knows that as The Corporation Trust Company handles only corporate matters and handles them only *for* lawyers and *with* lawyers, its representation service ensures business system and precision to every *business* detail of corporate representation, with attention to all *law* matters by the company's own lawyer.

If you have clients who suggest naming their employes as corporate representatives, send for copies of the pamphlet, "Judgment by Default"—which will make any corporation official understand better the position of a corporation lawyer in this important matter.

above, and then assigned to appellant. Appellant's manner of conducting business," said the court, "constituted 'doing business' in this state." *Baldwin Music Shop, Inc. v. Watson,** 102 S. W. (2d) 478. E. B. Lewis of Center, for appellant. Dallas Ivey of Center, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Texas volume, page 506.

Wisconsin.

Unlicensed foreign corporation denied right to sue on contract involving Wisconsin property. Plaintiff, a Florida corporation not licensed in Wisconsin, sought in this action to compel defendant Wisconsin corporation to repurchase certain bonds sold to plaintiff by defendant under an offer to repurchase made by defendant prior to the sale of the bonds. A recovery was denied by the Supreme Court of Wisconsin because of the provisions of subsection (10) of section 226.02, Stats. 1929, making void as to a foreign corporation "every contract made by or on behalf of any such foreign corporation, affecting the personal liability thereof or relating to property within this state," where the corporation had not complied with the requirements as to licensing contained in section 226.02. The court concluded that the contract in question constituted the transaction of business in Wisconsin, as it related to property within the state. Plaintiff contended that the bonds, being intangible property, had a situs in Florida. This the court answered by saying that "the situs of a chose in action is the residence of the creditor or owner, and since the contract related to the purchase of bonds belonging to the defendant, a Wisconsin corporation and a Wisconsin resident, the bonds were property within the state." "Property located here had to be sold before it could achieve a Florida situs, and certainly the repurchase agreement related to the property in this state and to its original sale to plaintiff." A judgment for defendant was affirmed. *Florida Realty Finance & Security Co. v. Chris. Schroeder & Sons Co.,** 272 N. W. 38. Lines, Spooner & Quarles and George J. Carroll (Chas. B. Quarles, of counsel), of Milwaukee, for appellant. Fish, Marshutz & Hoffman (I. A. Fish and W. H. Voss, of counsel), for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, Wisconsin volume, page 509.

Taxation

Alabama.

Alabama franchise tax held valid as applied to a foreign corporation with its principal office in state engaged in interstate and intrastate activities. In *State v. Southern Natural Gas Corporation*, 170 So. 178, (The Corporation Journal October, 1936, page 232), the Alabama Supreme Court held that a qualified foreign corporation,

with its principal place of business in Alabama, engaged in interstate activities, was subject to a state franchise tax by reason of the exercise of its corporate functions and the employment of capital in that state. Upon appeal, the Supreme Court of the United States affirms this holding. Defendant Delaware corporation conducted the entire management and control of its business from Birmingham, Alabama. It operated pipe lines from Louisiana and Mississippi fields, delivering natural gas directly to four Alabama purchasers who distributed it as public utilities. The court observed that while Delaware was defendant's state of incorporation, its commercial domicile was in Alabama, and it appeared that it carried on in Alabama activities of an intrastate character when it agreed to install metering stations to measure the amount of gas delivered for one of its customers and to establish the requisite service lines running to plants in order that gas might be furnished in the manner suited to the consumer's needs. Quoting an earlier case, the court said: "The treatment and division of the large compressed volume of gas is like the breaking of an original package, after a shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail." It was held proper for Alabama to measure the tax by the capital employed within the state, provided the tax was not so laid as to discriminate against interstate commerce or otherwise lay a direct burden upon it. In this case there was ruled to be no showing of any direct burden upon interstate commerce, the effect upon that commerce being incidental and remote, not differing in this respect from the effect of ordinary *ad valorem* taxation of property within the state. *Southern Natural Gas Corporation et al. v. State of Alabama,** Supreme Court of the United States, April 26, 1937, Docket No. 570, October Term, 1936. Commerce Clearing House Court Decisions Reporting Service Requisition No. 176597; 57 S. Ct. 696.

* The full text of this opinion is printed in **The Corporation Tax Service, Alabama volume, page 1533.**

Georgia.

Income tax law of 1929 held not to apply to income from sale of products of Georgia mines sold in other states. Defendant, a New Jersey company, mining clay in Georgia, shipped the clay out of the state on orders closed out of the state, the company having no office or officer in Georgia. The issue being whether the state of Georgia might tax the income from the product so sold, the Court of Appeals of Georgia, in construing the 1929 Income Tax Law, held that the income from such sales is not Georgia income within the meaning of the 1929 Act and is not taxable under that act. *State Revenue Commission et al. v. Edgar Brothers Co.,* Court of Appeals of Georgia, March 17, 1937. CCH Court Decisions Reporting Service Requisition No. 174567; 190 S. E. 623. M. J. Yoemans, Atty. General, and

B. D. Murphy, Asst. Atty. General, for plaintiffs in error. Park & Strozier and Orville Park, Jr., of Macon, for defendant in error.*

* Full text printed in **The Corporation Tax Service, Georgia, page 1649.**

Indiana.

Gross Income Tax law held constitutional by the Indiana Supreme Court as applied to the gross income of an Indiana corporation derived from business conducted in interstate and foreign commerce. "A general tax, measured by gross income, has never been passed upon by the Supreme Court of the United States" was an observation made by the Indiana Supreme Court in an action concerned with the validity of the Indiana Gross Income Tax Law (Acts 1933, ch. 50), as applied to the gross income of an Indiana manufacturing company, with its home office, principal place of business and only manufacturing plant located in that state. While substantial sales were made by it to purchasers within the state, 80 per cent. of the corporation's entire gross income was derived from business in other states and foreign countries. In reversing the judgment of the lower court, which had held the tax invalid as applied to such income, the court remarked: "Any tax upon one engaged in interstate commerce is a burden upon interstate commerce, but all taxes are not illegal burdens. It is only where the tax is laid upon interstate commerce as such, or in such a manner as to discriminate against interstate commerce, that it is to be condemned." The court found the tax under consideration to be a general tax which did not discriminate against those engaged in interstate commerce. It was also concluded that a lower rate applicable to manufacturers and wholesalers, as compared with the rate applying to retailers and other taxpayers generally, did not result in objectionable discrimination. Income of the defendant, received as interest on tax-exempt bonds of municipal corporations of Indiana, was held to be taxable, as "there is no statutory provision which exempts the interest from excise taxes which may be imposed by the state." *William Storen, etc., et al. v. J. D. Adams Manufacturing Co.,** Indiana Supreme Court, April 30, 1937. Commerce Clearing House Court Decisions Reporting Service Requisition No. 176987.

* Full text printed in **The Corporation Tax Service, Indiana, page 285.**

In *Breslav v. New York & Queens Electric Light & Power Co. et al.*, 7 N. E. (2d) 708, the Court of Appeals of New York affirmed the order of the Appellate Division of the Supreme Court, Second Judicial Department, 249 App. Div. 181, 291 N. Y. S. 932, (The Corporation Journal, January, 1937, page 294), and answered in the affirmative the following question which had been certified: "Does the complaint state facts sufficient to constitute a cause of action?" The lower court had held an attempt, by charter amendment, to reclassify non-callable preferred stock so as to make it callable at a stated amount at the option of the defendant corporation, to violate the stockholder's vested interest in the corporation.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

ALABAMA. Docket No. 570. *Southern Natural Gas Corporation et al. v. The State of Alabama,* 170 So. 178. (The Corporation Journal, October, 1936, page 232.) Validity of franchise tax upon qualified foreign corporation engaged in interstate activities, with principal office in Alabama. **Appeal filed December 16, 1936. Probable jurisdiction noted January 4, 1937. Argued March 10, 1937. Judgment affirmed April 26, 1937; opinion by Chief Justice Hughes.** (See page 422.)

LOUISIANA. Docket No. 652. *Great Atlantic & Pacific Tea Company v. Grosjean, Supervisor of Public Accounts et al.,* 16 F. Supp. 499, (The Corporation Journal, November, 1936, page 256). Constitutionality of Louisiana Chain Store Tax. **Appeal filed January 14, 1937. Probable jurisdiction noted February 1, 1937. Argued March 30 and 31, 1937. Decree affirmed, May 17, 1937. Opinion by Justice Roberts. Justices Van Devanter and Stone took no part in consideration or decision of this case. Dissenting opinion by Justice Sutherland in which Justices McReynolds and Butler joined.**

MISSOURI. No. 712. *Phillips Pipe Line Company v. The State of Missouri,* 97 S. W. (2d) 109. (The Corporation Journal, January, 1937, page 303.) Validity of franchise tax as applied to activities of a pipeline company. **Appeal filed February 5, 1937. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 1, 1937. On motion of the Attorney General of the State of Missouri this case is continued to the October Term 1937, March 29, 1937.**

VIRGINIA. Docket No. 40. *The Atlantic Refining Company v. Commonwealth of Virginia,* 183 S. E. 243. (The Corporation Journal, March, 1936, page 136.) Validity of foreign corporation entrance fee. **Appeal filed April 24, 1936. Jurisdiction postponed to hearing of case on its merits, May 18, 1936. Argument concluded October 22, 1936.**

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* Data compiled from CCH U. S. Supreme Court Service, 1936-1937.

Regulations and Rulings

FLORIDA—Two regulations recently issued by the State Comptroller relative to the computation of the Florida Chain Store Tax where a taxpayer opens additional stores during the year are reprinted in full at ¶¶ 45-609a and 45-609b of the Florida Corporation Tax (CT) Service.

INDIANA—"Temporary Regulation 1937-A," requiring employers to file a certified list of non-resident employees on July 25, 1937, in connection with the withholding at the source of the Indiana Gross Income Tax, issued by the Department of Treasury, Gross Income Tax Division, is presented in The Corporation Tax Service, Indiana volume, page 284.

MISSOURI—Where the taxpayer's records are kept on a strictly accrual basis, the State Auditor's office permits the deduction of Federal income taxes in the year in which they accrued. (Ruling of State Auditor, shown in Missouri CT Service, page 289-26.)

NEW YORK—Rulings with respect to the Stock Transfer Tax, recently released by the Stock Transfer Tax Bureau, under the title of "Information Relating to the Stock Transfer Tax Law," are printed in full in The Corporation Tax Service, New York, pages 4477 et seq.

NORTH CAROLINA—An opinion of the Attorney General to the effect that a foreign corporation which has contracted to erect a boiler in the state, furnishing its own employees, is not required to domesticate in the state where the boiler has been sold in interstate commerce, under the rule in *York Mfg. Co. v. Colley*, 247 U. S. 21, appears in the North Carolina CT Service, page 139.

NORTH DAKOTA—The Attorney General has rendered an opinion that vendors must account for and pay the sales tax on their gross sales irrespective of the amount of tax collected from the customers. (Reported on page 7137 of the North Dakota CT Service.)

OKLAHOMA—Findings of the Oklahoma Court of Tax Review, by counties, are reported in the "Property Taxes" Division of the Oklahoma volume of The Corporation Tax Service, pages 2101 to 2429, inclusive.

TEXAS—An Attorney General's opinion has been rendered to the effect that where taxpayers, through negligence or otherwise, voluntarily pay their taxes erroneously, they have no claim for the refund of the taxes so paid, and the Comptroller is without authority to refund or allow the tax assessor-collector to refund any money so paid. (Texas CT Service, pages 2643 and 2644.)

WYOMING—Rules and Regulations issued in connection with the Sales Tax on April 1, 1937, were furnished subscribers to the Wyoming CT Service within a few days thereafter and are found printed on pages 6201 to 6217 of that Service.

Some Important Matters for June, July, August, September and October

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Service* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details of the Service from any office of The Corporation Trust Company.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

Franchise Tax based on net income. Second instalment due on or before September 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31).—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

Certified List of non-resident employees due on July 25.—Domestic and Foreign Corporations.

IOWA—Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing the Annual Report in July.—Foreign Corporations.

IOWA—(continued)

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

MARYLAND—Annual Franchise Tax due on or before August 1.—Domestic and Foreign Corporations.

MASSACHUSETTS—Second Installment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July or August.—Domestic and Foreign Corporations.

MISSISSIPPI—Annual Report and Fee to Factory Inspector due in July. Domestic and Foreign Corporations employing 5 or more persons in Mississippi.

Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

Annual Report and Fee due during July.—Foreign Corporations.

Annual Statement due on or before September 15.—Foreign Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due in August.—Domestic Corporations.

Franchise Tax Return and Tax due on or before August 15.—Foreign Corporations.

NORTH CAROLINA—Annual Franchise Tax Report and Tax due on or before July 31.—Domestic and Foreign Corporations.*

NORTH DAKOTA—Corporation Report due during July.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20 and October 20.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 15 and October 15.—Domestic and Foreign Corporations.

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* Changes in due dates of report and payment of the tax effected by the 1937 North Carolina Revenue Act.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report and Tax due on or before August 31.—Domestic and Foreign Corporations.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual License Fee due between July 1 and August 15.—Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due July 1; delinquent after July 15.—Domestic and Foreign Corporations.

Semi-Annual Report to Department of Labor due in October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment (filed with and paid to Commissioner of Finance and Taxation) due on or before July 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax (filed with and paid to Secretary of State) due on or before July 1.—Domestic and Foreign Corporations.

Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second and Third Instalments of Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having offices or places of business in the United States.

Capital Stock Tax Return and Payment due on or before July 31.—Domestic and Foreign Corporations.

UTAH—Annual Report to the Industrial Commission due in July.—Domestic and Foreign Corporations employing 3 or more persons in Utah.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

Quarterly Gross Income Tax Returns and Payments due on or before July 30 and October 30.—Domestic and Foreign Corporations.

WISCONSIN—Second Instalment of Income Tax due on or before August 1.—Domestic and Foreign Corporations.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1935.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petition for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a Form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.